

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE PRADO,

Petitioner,

vs.

PEOPLE OF CALIFORNIA,

Respondent.

C 07-2368 MJJ (PR)

**ORDER OF DISMISSAL**

(Docket No. 6)

Petitioner, a California prisoner, filed this pro se habeas corpus petition pursuant to 28 U.S.C. § 2254. He states that he filed a petition in the California Supreme Court challenging the conviction he challenges herein, and that such petition is “pending” and is “not yet decided.” (See Petition at 4.)

The exhaustion requirement applicable to federal habeas petitions is not satisfied if there is a pending post-conviction proceeding in state court. See 28 U.S.C. § 2254(b)-(c); Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). If a post-conviction challenge to a criminal conviction is pending in state court, a potential federal habeas petitioner must await the outcome of the challenge before his state remedies are considered exhausted. See id. Moreover, the rule in Sherwood applies whether or not the issue raised in the pending state petition is included in the federal petition because a pending state court challenge may result in the reversal of the petitioner's conviction, thereby mooting the federal petition. See id. (citations omitted).

As petitioner has a petition pending in the California Supreme Court, the instant petition for a writ of habeas corpus is DISMISSED without prejudice to refiling once all state


1 court challenges to petitioner's conviction have been completed, and all claims petitioner  
2 wishes to raise in federal court have been presented to the California Supreme Court. See 28  
3 U.S.C. § 2254(b)-(c); Rose v. Lundy, 455 U.S. 509, 522 (1982) (holding every claim raised  
4 in federal habeas petition must be exhausted).

5 In light of petitioner's lack of funds, the application for leave to proceed in forma  
6 pauperis is GRANTED.

7 The Clerk shall close the file and terminate Docket No. 6 and any other pending  
8 motions.

9 IT IS SO ORDERED.

10 DATED: 6/8/2007

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12 MARTIN J. JENKINS  
13 United States District Judge  
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